Remarks:

AMENDMENTS TO CLAIMS:

Claims 1 and 20–22 have been amended and claim 7 has been cancelled. No new matter has been added. Support for the amendments can be found in the original specification, drawings, and/or claims. Specifically, Figure 2B and paragraph [0049] disclose obtaining an image of the lower portion of the legs of an animal.

REJECTION UNDER 35 U.S.C. § 112, FIRST PARAGRAPH:

Claims 1–14, 16–28, and 30–33 stand rejected under 35 U.S.C. § 112, first paragraph, as allegedly failing to comply with the written description requirement. Applicant respectfully traverses this rejection and requests that the Examiner reconsider and withdraw the above rejections in view of the above amendments to independent claims 1 and 20.

REJECTION UNDER 35 U.S.C. § 112, SECOND PARAGRAPH:

Claims 1–14, 16–28, and 30–33 stand rejected under 35 U.S.C. § 112, second paragraph, as allegedly being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. Applicant respectfully traverses this rejection and requests that the Examiner reconsider and withdraw the above rejections in view of the above amendments to independent claims 1 and 20.

FIRST REJECTION UNDER 35 U.S.C. § 103(a):

Claims 1–4, 7–14, 16–24, 26–28, and 30–33 stand rejected under 35 U.S.C. § 103(a) as allegedly being unpatentable over U.S. Patent No. 5,483,441 to Scofield ("Scofield") in view of WO99/76731 to Doyle ("Doyle"). Applicant requests that the Examiner reconsider and withdraw the above rejections in view of the above amendment and following remarks.

The fundamental basis for an obviousness determination under 35 U.S.C. §103(a) was set forth by the Supreme Court in *Graham v. John Deere Co.,* 383 US 1; 148 U.S.P.Q. 459 (1966). In subsequent cases involving a determination of obviousness under 35 U.S.C. §103, the Federal Circuit has noted that the following basic tenets of patent law must be adhered to: 1) the claimed invention must be considered as a whole; 2) the references must be considered as a whole and must suggest the desirability and, thus, the obviousness of making the combination; 3) the references must be viewed without the benefit of impermissible hindsight vision afforded by the claimed invention; and 4) reasonable expectation of success is the standard with which obviousness is determined. *Hodosh v. Block Drug Co., Inc.,* 786 F.2d 1136, 1143 n.5, 229 U.S.P.Q. 182, 187, n.5 (Fed. Cir. 1986) (emphasis added). All of the claim limitations must be taught in order to establish obviousness. *In re Royka*, 490 F.2d 981, 180 U.S.P.Q. 580 (C.C.P.A. 1974).

As noted above, all of the claim limitation must be taught in order to establish obviousness. Independent claims 1 and 20, as amended, require obtaining the image of the lower portion of the leg of an animal. As noted by the Examiner, Scofield discloses means for obtaining an image of a portion of the animal's backside. Scofield does not disclose, teach, or suggest obtaining an image of the lower portion of an animal's leg. Likewise, Doyle does not teach this limitation. For at least this reasons, Applicant respectfully requests that the Examiner reconsider and withdraw the § 103(a) rejection of amended independent claims 1 and 20.

Claims 2–4, 8–14, 16–19, 21–24, 26–28, and 30–33 depend from claims 1 and 20 and thus, incorporate each limitation therein. Therefore, claims 2–4, 8–14, 16–19, 21–24, 26–28, and 30–33 are allowable for at least the same reason as independent claims 1 and 20. Applicant therefore respectfully requests that the Examiner also reconsider and withdraw the rejection of claims 2–4, 8–14, 16–19, 21–24, 26–28, and 30–33.

SECOND REJECTION UNDER 35 U.S.C. § 103(a):

Claims 1–3, 7–13, 20–23, and 25 stand rejected under 35 U.S.C. § 103(a) as allegedly unpatentable over U.S. Patent No. 4,939,574 to Petersen et al. ("Petersen") in view of Doyle. Applicant requests that the Examiner reconsider and withdraw the above rejections in view of the following remarks.

The applicable case law for a rejection under 35 U.S.C. § 103(a) has been discussed above in the response to the first rejection under 35 U.S.C. § 103(a). In the interests of brevity, Applicant requests the Examiner to note the above section and consider that material incorporated herein by reference.

All of the claim limitation must be taught in order to establish obviousness. Petersen discloses a system for measuring certain aspects of a carcass, such as fat content. Independent claims 1 and 20 each require determining the standing height of an animal. A carcass does not have a standing height. Petersen also does not disclose the use of a first ultrasound transducer arranged vertical to the animal to determine the approximate standing height of a second portion of the animal. Further, Petersen does not disclose, teach, or suggest obtaining an image of the lower portion of an animal's leg. Likewise, Doyle does not teach this limitation. For at least this reasons, Applicant respectfully requests that the Examiner reconsider and withdraw the § 103(a) rejection of amended independent claims 1 and 20.

Additionally, Applicant respectfully traverses the Examiner's assertion that there is a suggestion to combine Petersen with Doyle. As noted above, the references must be considered as a whole and **must suggest the desirability and, thus, the obviousness of making the combination**. (Emphasis Added.)

Doyle teaches "the use of an ultrasound transducer arranged substantially vertical to the animal **for the purpose of determining an approximate height of a portion of an animal** for measuring the height irrespective of the relative vertical location of the pelvis relative to the length of the animal." (Emphasis Added.) (Final Office Action, p. 5.) Doyle teaches the use of an ultrasound transducer to measure the height of a portion of a stationary, live animal standing in a holding chute. The transducer in Doyle is generally directed to the pelvis area of the animal while it is standing and is used to measure the pelvic height and width of the animal. The transducer of Doyle transmits an ultrasonic wave which bounces off the frame of the animal, in particular the pelvis. The height history off the animal may be used to determine the growth of the animal and may aid in the determination of the optimal time to slaughter the animal.

Petersen discloses a system for measuring certain aspects of a carcass, such as fat content. Petersen deals with carcasses, which are hung on a hook in front of a dark background and a

video picture is taken. A carcass does not have a standing height. As such, there is no motivation to combine Doyle with Petersen. Instead, the use of Doyle with Petersen would only provide the distance between the carcass and the transducer. This distance is irrelevant in regards to measuring certain aspects of a carcass, such as fat content, and thus, one of ordinary skill in the art would not be motivated to combine Doyle and Petersen.

The positioning of an ultrasonic transducer substantially vertical to a carcass would not provide any carcass characteristics contemplated by Petersen. The ultrasonic transducer disclosed in Doyle does not penetrate the skin of the animal and thus, Doyle could not be successfully combined with Petersen to successfully determine the fat content of a carcass or the quality of the carcass. In fact, Doyle teaches that in order to estimate subcutaneous fat of an animal a transducer would be placed **directly on the animal** at specific anatomical points rather than arranged vertically above the animal as taught by Doyle. (Doyle col. 50–57.) Further, Petersen even teaches away from using an ultrasonic device to determine fat content. (Petersen col. 3, ln. 29–37.) Thus, Doyle and Petersen when considered as a whole do not suggest the desirability of the combination.

Petersen does not disclose, teach, or suggest the limitations of independent claims 1 and 20. Further, for at least the above reasons Petersen and Doyle do not suggest the desirability and thus, the obviousness of combining the two references. Applicant respectfully requests that the Examiner reconsider and withdraw the § 103(a) rejection of independent claims 1 and 20.

Claims 2–3, 8–13, 21–23, and 25 depend from claims 1 and 20 and thus, incorporate each limitation therein. Therefore, claims 2–3, 8–13, 21–23, and 25 are allowable for at least the same reason as independent claims 1 and 20. Applicant therefore respectfully requests that the Examiner also reconsider and withdraw the rejection of claims 2–3, 8–13, 21–23, and 25.

THIRD REJECTION UNDER 35 U.S.C. § 103(a):

Claim 5 and 6 stand rejected under 35 U.S.C. § 103(a) as allegedly being unpatentable over Petersen in view of U.S. Patent 6,639,352 to Eom ("Eom"). Applicant requests that the Examiner reconsider and withdraw the above rejections in view of the following remarks.

The applicable case law for a rejection under 35 U.S.C. § 103(a) has been discussed above in the response to the first rejection under 35 U.S.C. § 103(a). In the interests of brevity,

Applicant requests the Examiner to note the above section and consider that material incorporated herein by reference.

As discussed above, independent claim 1 is not disclosed, taught, or suggested by Petersen. In fact, the Examiner admits that Petersen alone does not disclose, teach, or suggest the invention of independent claim 1. Eom also does not disclose, teach, or suggest the invention of independent claim 1. Claims 5 and 6 each depends from independent claim 1 and thus necessarily incorporates each limitation therein. Therefore, claims 5 and 6 are allowable for at least the same reasons as independent claim 1. Applicant therefore respectfully requests that the Examiner also reconsider and withdraw the rejection of claims 5 and 6.

FOURTH REJECTION UNDER 35 U.S.C. § 103(a):

Claims 14 and 33 stand rejected under 35 U.S.C. § 103(a) as allegedly being unpatentable over Petersen in view of U.S. Patent 4,785,817 to Stouffer ("Stouffer"). Applicant requests that the Examiner reconsider and withdraw the above rejections in view of the following remarks.

The applicable case law for a rejection under 35 U.S.C. § 103(a) has been discussed above in the response to the first rejection under 35 U.S.C. § 103(a). In the interests of brevity, Applicant requests the Examiner to note the above section and consider that material incorporated herein by reference.

As discussed above, independent claims 1 and 20 are not disclosed, taught, or suggested by Petersen. In fact, the Examiner admits that Petersen alone does not disclose, teach, or suggest the invention of independent claims 1 and 20. Stouffer also does not disclose, teach, or suggest the invention of independent claims 1 and 20. Claims 14 and 33 depend from independent claims 1 and 20, and thus necessarily incorporate each limitation therein. Therefore, claims 14 and 33 are allowable for at least the same reasons as independent claims 1 and 20. Applicant therefore respectfully requests that the Examiner also reconsider and withdraw the rejection of claims 14 and 33.

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For at least the reasons presented above, Applicant respectfully requests that the rejection of claims 1–6, 8–14, 16–28, and 30–33 be reconsidered and withdrawn and that the Examiner indicate the allowance of the claims in the next paper from the Office.

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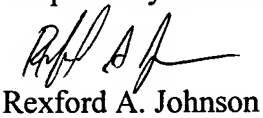
Applicant invites the Examiner to contact the undersigned attorney by telephone to discuss any issues or questions presented by this paper.

Respectfully submitted,



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